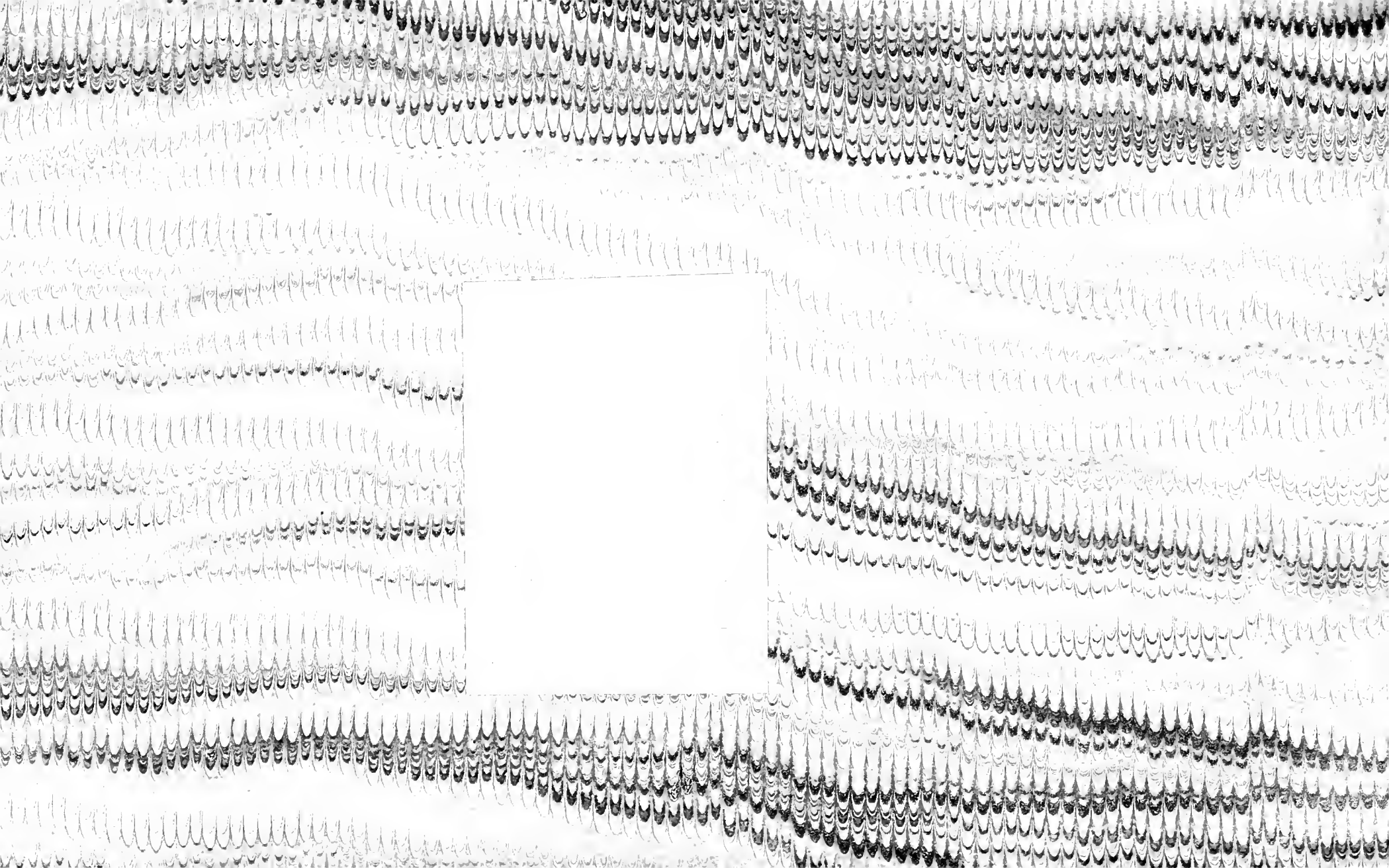

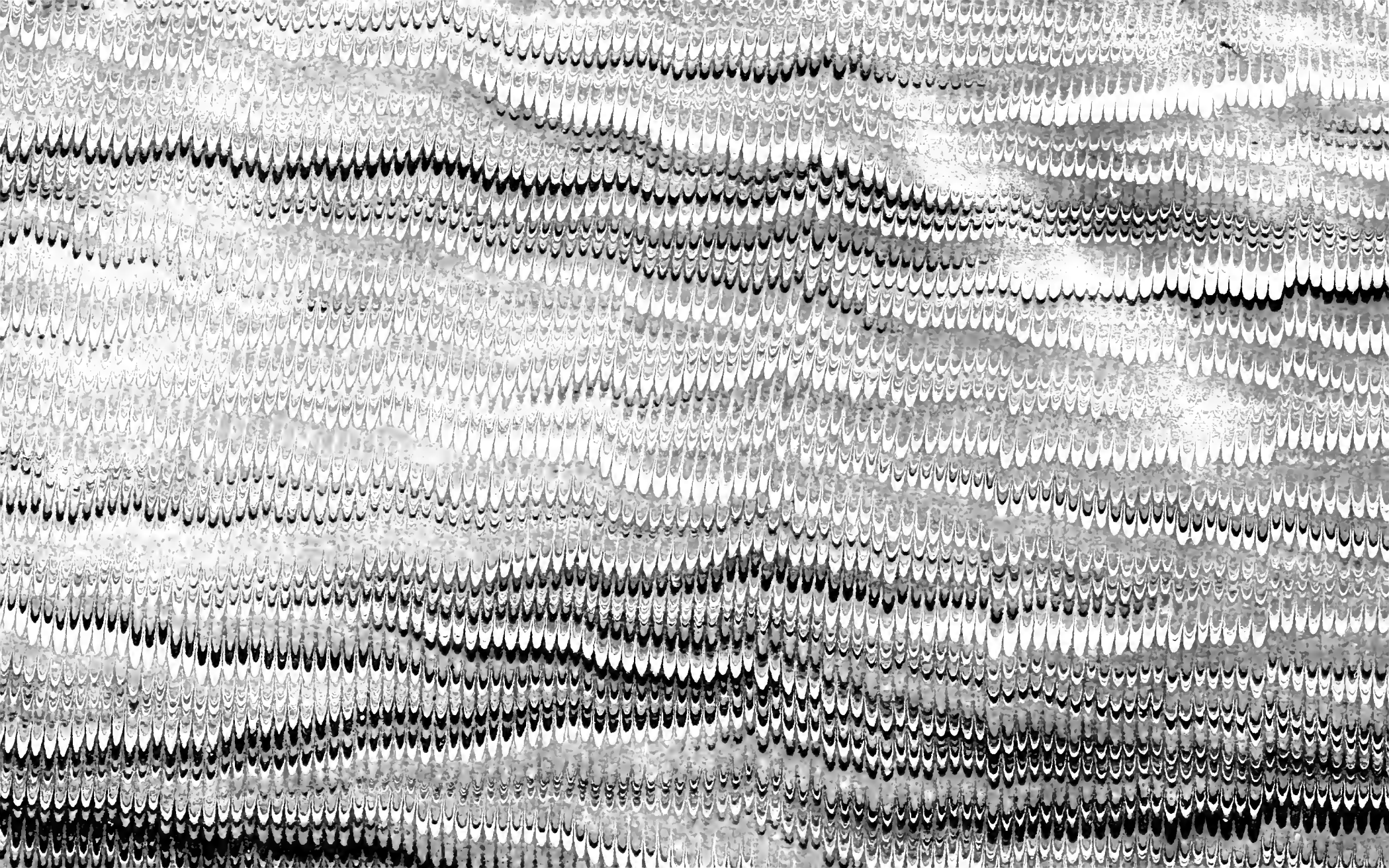

SPEECH

OF

HON. CHARLES SUMNER,

OF MASSACHUSETTS,

IN THE SENATE OF THE UNITED STATES, JUNE 10, 1868.

The Senate having under consideration the bill (H. R. No. 1058) to admit the States of North Carolina, South Carolina, Louisiana, Georgia, and Alabama to representation in Congress—

Mr. SUMNER said:

Mr. PRESIDENT: What I have to say to-day will be confined to a single topic. I shall speak of the *validity and necessity of fundamental conditions on the admission of States into the body of the Nation;* passing in review objections founded on the asserted Equality of States and also founded on a misinterpretation of the power to determine the "qualifications" of electors, and that other power to make "regulations" for the election of certain officers. Here I shall encounter the familiar pretensions of another time, no longer put forth by defiant slave-masters, but retailed by conscientious Senators, who think they are supporting the Constitution, when they are only echoing the voice of slavery.

Fundamental conditions on the admission of States are older than our Constitution; for they appear in the Ordinance for the vast territory of the Northwest, adopted anterior to the Constitution itself. In that Ordinance there are various conditions, of perpetual obligation, as articles of compact. Among these is the famous prohibition of slavery. In the early days of our Nation, nobody thought of questioning the validity of these conditions. Scattered efforts were made to carry slavery into some portions of this region, and, unquestionably, there were sporadic cases, as in Massachusetts itself; but the Ordinance stood firm and unimpeached.

One assurance of its authority will be found in the historic fact that in 1820, on the admission of Missouri as a State of the Union, there was a further provision that in all territory of the United States north of 36° 30′ north latitude, "Slavery and involuntary servitude, otherwise than in the punishment of crimes, whereof the parties shall have been duly convicted, shall be and hereby is FOREVER *prohibited.*" This was the famous Missouri compromise. Missouri was admitted as a State without any restriction of slavery, and all the outlying territory west and north was subjected to this condition *forever.* It will be observed that the condition was in no respect temporary; but that it was "forever," thus outlasting any territorial Government and constituting a fundamental law, irrepealable through all time. Surely this condition, perpetual in form, would not have been introduced had it been supposed to be inoperative—had it been regarded as a sham and not a reality. This statute, therefore, testifies to the judgment of Congress at that time.

It was only at a later day, and at the demand of slavery, that the validity of the great Ordinance of Freedom was called in question. Mr. Webster, in his memorable debate with Mr. Hayne in 1830, vindicated this measure in language worthy of the cause and of himself, giving to it a palm among the laws by which civilization has been advanced, and asserting its enduring character:

"We are accustomed, sir, to praise the lawgivers of antiquity: we help to perpetuate the fame of Solon and Lycurgus; but I doubt whether one single law of any lawgiver, ancient or modern, has produced effects of more distinct, marked, and lasting character than the ordinance of 1787. It fixed forever the character of the population in the vast regions northwest of the Ohio, by excluding from them involuntary servitude. It impressed on the soil itself, while it was yet a wilderness, an incapacity to sustain any other than freemen. *It laid the interdict against personal servitude, in original compact, not only deeper than all local law, but deeper also than all local constitutions.*"—*Webster's Works*, vol. 3, p. 251.

Words of greater beauty and power cannot be found anywhere in the writings or speeches of our American orator. It would be difficult to declare the perpetual character of this original interdict more completely. The language is as picturesque as truthful. Deeper than all local law, deeper than all local constitutions, is this fundamental law; and such is its essential quality, that the soil which it protects cannot sustain any other than freemen. Of such a law the orator naturally proceeded to say:

"We see its consequences at this moment, and we shall never cease to see them, perhaps, while the Ohio shall flow. *It was a great and salutary measure of prevention.*"—*Ibid.*

In these last words the value of such a law is declared. It is for *prevention*, which is an essential object of all law. In this case it is the more important, as the evil to be prevented is the most comprehensive of all.

Therefore, on the authority of Mr. Webster, in harmony with reason also, do I say, that this original condition was not only perpetual in character, but beneficent also. It was beneficence in perpetuity.

Mr. Chase, in his admirable argument before the Supreme Court of the United States, in the *Van Zandt case*, is hardly behind Mr. Webster in homage to this Ordinance or in a sense of its binding character. In his opinion it is a compact of perpetual obligation:

"I know not that history records a sublimer act. The United American States, having just brought their perilous struggle for freedom and independence to a successful issue, proceeded to declare the terms and conditions on which their vacant territory might be settled and organized into States; and these terms were: not tribute, not render of service, not subordination of any kind; *but the perpetual maintenance of the genuine principles of American liberty, declared to be incompatible with slavery;* and that these principles might be inviolably maintained, they were made the *articles of a solemn covenant* between the original States, then the proprietors of the territory and responsible for its future destiny, and the people and the States who were to occupy it. Every settler within the territory, by the very act of settlement, became a party to this *compact, bound by its perpetual obligations*, and entitled to the full benefits of its excellent provisions for himself and his posterity. No subsequent act of the original States could affect it, without his consent. *No act of his, nor of the people of the territory, nor of the States established within it, could affect it, without the consent of the original States.*"

According to these words, which I am sure would not be disowned by the present Chief Justice of the United States, the Ordinance is a sublime act, having for its object nothing less than *the perpetual maintenance of the genuine principles of American liberty.* In form it is a compact, unalterable except by the consent of the parties, and, therefore, *forever.*

If anything in our history is settled by original authority, supported by tradition and time, it is the binding character of the Ordinance for the government of the Northwest Territory. Nobody presumed to call it in question, until at last Slavery flung down its challenge to everything that was settled for Freedom. The great Ordinance, with its prohibition of slavery, was not left unassailed.

All this makes a strange eventful passage of history. The enlightened civilization of the age was beginning to be felt against slavery, when its representatives turned madly round to confront the angel of light. The madness showed itself by degrees. Point by point, it made itself manifest in Congress. The slave-masters forgot morals, history, and the Constitution. Their manifold pretensions resolved themselves into three, in which the others were absorbed; first, that slavery, instead of an evil to be removed, was a blessing to be preserved; secondly, that the right of petition could not be exercised against slavery; thirdly, that in all that concerns slavery State Rights were everything, while National Rights were nothing. These three pretensions entered into Congress, like so many devils, and possessed it. The first broke forth in eulogies of slavery and even in blandishments for the slave trade. The second broke forth in the "Atherton gag," under which the honest, earnest petitions, from the national heart, against slavery, even in the District of Columbia, were tabled without reference, and the great right of petition, promised by the Constitution, became a dead letter. The third, beginning with the denial of the power of the Nation to affix upon new States the perpetual condition of Human Rights, broke forth in the denial of the power of the Nation over slavery in the Territories or anywhere else, even within the national jurisdiction. These three pretensions all had a common origin, and one was as offensive and unreasonable as the other. The praise of slavery and the repudiation of the right of petition by the enraged slave-masters was not worse than the pretension of State Rights against the power of the Nation to prohibit slavery in the national jurisdiction, or to affix righteous conditions upon new States.

The first two pretensions have disappeared. These two devils have been cast out. Nobody dares to praise slavery; nobody dares to deny the right of petition. The third pretension has disappeared, only so far as it denied the power of the Nation over slavery in the Territories; and we are still doomed to hear, in the name of State Rights, the old cry against conditions upon new States. This devil is not yet entirely cast out. Pardon me if I insist upon putting the national rights over the Territories and the national rights over new States before their admission in the same category. These rights not only go together; but they are one and the same. They are not merely companion and cognate; but they are identical. The one is necessarily involved in the other. Prohibition in the Territories is prolonged in con-

ditions upon new States. The Ordinance of 1787, which is the great example, asserts the *perpetuity* of all its prohibitions; and this is the rule alike of law and statesmanship. Vain were its prohibitions, if they fell dead in presence of State Rights. The pretension is too irrational. The Missouri act takes up the rule asserted in the Ordinance, and declares that, in certain territories, slavery shall be prohibited *forever*. A territorial existence, terminating in State Rights is a short-lived forever. Only by recognizing the power of the Nation over the States formed out of the Territory can this *forever* have a meaning above the prattle of childhood or the vaunt of Bombastes.

The whole pretension against the proposed condition is in the name of State Rights; but it cannot be doubted that it may be traced directly to slavery. Shall the pretension be allowed to prevail, now that slavery has disappeared? The principal has fallen; why preserve the incident? The wrong guarded by this pretension has yielded; why should not the pretension yield also? Asserting as I now do the validity and necessity of the proposed condition, I would not seem indifferent to the rights of the States in those proper spheres appointed for them. Unquestionably States have rights under the Constitution, which we are bound to respect; nay more, which are a source of strength and advantage. It is through the States that the people everywhere govern themselves, and our Nation is saved from a central domination. Here is the appointed function of the States. They supply the machinery of local self-government for the convenience of life, while they ward off the attempts of an absorbing imperialism. *But there can be no State Rights against Human Rights.* Because a State, constituting part of a Nation dedicated to Human Rights, may govern itself and supply the machinery of local self-government, it *does not follow that such a State may deny Human Rights within its borders.* State Rights, when properly understood, are entirely consistent with the maintenance of Human Rights by the Nation. The State is not humbled when it receives the mandate of the Nation to do no wrong; nor can the Nation err when it asserts everywhere within its borders the imperialism of Human Rights. Against this righteous supremacy all pretensions of States must disappear as darkness before the King of Day.

The song of State Rights has for its constant refrain the asserted *Equality of the States.* Is it not strange that words so constantly employed, as a cover for pretensions against Human Rights, cannot be found in the Constitution? It is true, that by the laws of nations, all sovereign States, great or small, are equal; but this principle has been extended without authority to States created by the Nation and made a part of itself. There is but one active provision in the Constitution which treats the States as equal, and this provision shows how this very Equality may be waived. Every State, large or small, has two Senators, and the Constitution places this Equality of States under its safeguard by providing that "no State *without its consent* shall be deprived of its *equal suffrage* in the Senate." But this very text contains what lawyers might call a "negative pregnant," being a negation of the right to change this rule, with an affirmation that it may be changed. The State *with its consent* may be deprived of its equal suffrage in the Senate. And this is the whole testimony of the Constitution to that Equality of States, which is now asserted in derogation of all compacts or conditions. It is startling to find how constantly the obvious conclusions from the text of the Constitution have been overlooked. Even in the contemplation of the Constitution itself, a State may waive its equal suffrage in the Senate, so as to be represented by a single Senator only. Of course, all this must depend on its own consent, in concurrence with the Nation. Nothing is said of the manner in which this consent may be given or accepted by the Nation. But if this important limitation can in any way be made the subject of agreement or compact, pray, sir, where will you stop? What other power or prerogative of the State may not be limited also, especially where there is nothing in the Constitution against any such limitation? All this I adduce, simply by way of illustration. There is no question now of any limitation in the just sense of this term. A condition in favor of Human Rights cannot be a limitation on a State or on a citizen.

If we look further and see how the senatorial equality of States obtained recognition in the Constitution, we shall find now occasion to admire that facility which has accorded to this concession so powerful an influence: and here the record is explicit. The National Convention had hardly assembled, when the small States came forward with their pretensions. Not content with suffrage in the Senate, they insisted upon equal suffrage in the House of Representatives. They had in their favor the rule of the Continental Congress and also of the Confederation, under which each State enjoyed one vote. Assuming to be independent sovereignties, they had also in their favor the rule of International Law. Against these pretensions the large States pleaded the simple rule of justice, and here the best minds concurred. On this head the debates of the Convention are interesting. At an early day, we find Mr. Madison moving that "the equality of suffrage established by the Confederation ought not to prevail in the *National* Legislature." This

proposition, so consistent with reason, was seconded by Gouverneur Morris, and according to the report "being generally relished," was about being adopted, when Delaware, by one of her voices on the floor, protested, saying, that, in case it were adopted, "it might become the duty of her delegates to retire from the Convention." Such was the earliest cry of secession. Gouverneur Morris, while observing that the valuable assistance of these delegates could not be lost without real concern, gave his testimony, that "the change proposed was so fundamental an article in a *National* Government, that it could not be dispensed with." (*Eliot. Debates*, vol. 5, p. 135.) Mr. Madison followed by saying very justly that "whatever reason might have existed for the equality of suffrage when the Union was Federal *among sovereign States*, it must cease, when a *National* government should be put in its place." Franklin, in similar spirit, reminded the Convention that the equal suffrage of the States "was submitted to originally under a conviction of its impropriety, inequality, and injustice." (*Ibid.*, p. 181.) This is strong language from the wise old man; but very true. Eibridge Gerry, after depicting the States as intoxicated with the idea of their sovereignty, said that "the injustice of allowing each an equal vote was long insisted on; that he voted for it; but that it was against his judgment and under the pressure of public danger and the obstinancy of the lesser States." (*Ibid.*, p. 259.) Against these overwhelming words of Madison, Morris, Franklin, and Gerry, the delegates from Delaware pleaded nothing more than that without an equal suffrage, "Delaware would have about one ninetieth for its share in the general councils, while Pennsylvania and Virginia would possess one third of the whole;" and New Jersey, by her delegates, pleaded also that "it would not be safe for Delaware to allow Virginia sixteen times as many votes as herself." (*Ibid.* p. 211.) On the part of the small States, the effort was for power disproportioned to size. On the part of the large States there was a protest against the injustice and inequality of these pretensions, especially in a Government national in its character. The question was settled by the great compromise of the Constitution, according to which representation in the House of Representatives was proportioned to population, while each State was entitled to an equal suffrage in the Senate. To this extent the small States prevailed, and the Senate ever since has testified to the equality of States, or, rather, according to the language of the Federalist on this very point, it has been the "palladium to the residuary sovereignty of the States." (*Federalist*, No. 43.) Thus, by the pertinacity of the small States, was this concession extorted from the Convention, in defiance of every argument of justice and equity, and contrary to the judgment of the best minds; and now it is exalted into a universal rule of constitutional law, before which justice and equity must hide their faces.

This protracted and recurring conflict in the Convention is compendiously set forth by our great authority, Judge Story, when he says, "it constituted one of the great struggles between the large and the small States, which was constantly renewed in the Convention and impeded it in every step of its progress in the formation of the Constitution. The struggle applied to the organization of each branch of the Legislature. The small States insisted upon an equality of vote and representation in each branch; and the large States upon a vote in proportion to their relative importance and population. The small States at length yielded the point, as to an equality of representation in the House; but they insisted upon an equality in the Senate. To this the large States were unwilling to assent; and for a time the States were on this point equally divided." (1 *Story, Commentaries*, Vol. 1 § 694.) This summary is in substantial harmony with my own abstract of the debates. I present it because I would not seem in any way to overstate the case. And here let me add most explicitly, that I lend no voice to any complaint against the small States; nor do I suggest any change in the original balances of our system. I insist only that the victory achieved in the Constitution by the small States shall not be made the apology for a pretension inconsistent with Human Rights. And now for the sake of a great cause the truth must be told.

It must not be disguised that this pretension has another origin outside the Constitution. This is in the Ordinance of 1787, where it is positively provided that any State, formed out of the Northwest Territory, "shall be admitted, by its delegates, into the Congress of the United States, on an *equal footing with the original States in all respects.*" (*Hickey's Constitution*, p. 425.) Next after the equal suffrage in the Senate stands this provision with its talismanic phrase, *equal footing*. New States are to be admitted on an *equal footing* with the original States in all respects whatever. This language is strong; but nobody can doubt that it must be read in the light of the Ordinance where it appears. Read in this light its meaning cannot be questioned. By the Ordinance there are no less than six different articles of compact "forever unalterable unless by common consent," constituting so many perpetual safeguards; the first perpetuating religious liberty; the second perpetuating trial by jury, *habeas corpus*, and judicial proceedings, according to the course of the common law; the third perpetuating schools and the means of education; the fourth perpetuating the title of the United

States in the soil without taxation, the freedom of the rivers as highways, and the liability of the people for a just proportion of the national debt; the fifth perpetuating the right of the States to be admitted into the Union on an *equal footing* with the other States; and then, next in order, the sixth perpetuating freedom—being that immortal condition, which is the golden bough of this mighty oak—"that there shall be neither slavery nor involuntary servitude in the said territory." Now it is clear that subjection to these perpetual conditions was not considered in any respect inconsistent with that "equal footing" which was stipulated. Therefore, even assuming that States when admitted shall be on an "equal footing" with others, there can be no hindrance to any conditions by Congress kindred to those which were the glory of the Ordinance.

To all who, borrowing a catch-word from slavery, assert the Equality of States in derogation of fundamental conditions, I oppose the plain text of the Constitution, which contains no such rule, except in a single instance, and there the equality may be waived; and I oppose also the Ordinance of 1787, which, while requiring that new States shall be admitted on an "equal footing" with other States, teaches by its own great example, that this requirement is not inconsistent with conditions of all kinds and especially in favor of Human Rights. The Equality of States on the lips of slave-masters was natural, for it was a plausible defense against the approaches of Freedom; but this unauthorized phrase, which has deceived so many, must be rejected now, so far at least as it is employed against the Equal Rights of all. As one of the old garments of slavery, it must be handed to the flames.

From this review, it is easy to see that we approach the present question without any impediment or constraint in the Constitution. Not a provision, not a clause, not a sentence, not a phrase in the Constitution can be made an apology even for the present objection. Absolutely nothing; and here I challenge reply. Without any support in the Constitution its partisans borrow one of the worst pretensions of slavery, and utter it now as it was uttered by slave-masters. Once more we hear the voice of slavery, crying out in familiar tones, that conditions cannot be imposed on new States. Alas! that slavery, which we thought had been slain, is not entirely dead. Again it stalks into this Chamber, like the majesty of buried Denmark—"In the same figure like the king that's dead"—and then, like this same ghost, it cries out "swear," and then again "swear;" and Senators pledged to freedom take up the old pretension and swear it anew. For myself, I insist, not only, that slavery shall be buried out of sight, but that all its wretched pretensions hostile to Human Rights shall be buried with it.

The conditions upon new States are of two classes; *first*, those that *may* be required; *secondly*, those that *must* be required.

The first comprehends those conditions, which the Nation may consider it advisable to require, before admitting a new member into the partnership of government. The Constitution, in positive words, leaves to the Nation a discretion with regard to the admission of new States. The words are: "New States *may* be admitted into the Union," thus plainly recognizing a latitude under which any conditions not inconsistent with the Constitution may be required, as by a firm on the admission of a new partner. All this is entirely reasonable; but I do not stop to dwell on it, for the condition which I have at heart does not come under this head.

A fundamental condition in favor of Human Rights is of that essential character, that it *must* be required. Not to require it is to abandon a plain duty; so it seems to me. I speak with all deference to others, but I cannot see it otherwise.

The Constitution declares, that "the United States shall guarantee to every State in this Union a *republican form of government*." These are grand words, perhaps the grandest in the Constitution, hardly excepting the Preamble, which is so full of majestic meaning and such a fountain of national life. Kindred to the Preamble is this supreme obligation imposed on the United States to guaranty a republican government. There it is. You cannot avoid this duty. Called to its performance, you must supply a practical definition of a republican government. This again you cannot avoid. By your oaths, by all the responsibilities of your position, you must say what in your judgment is a republican government, and you must so decide as not to discredit our fathers and not to give an unworthy example to mankind. Happily the definition is already of record in our history. Our fathers gave it to us, as amid the thunders of Sinai, when they put forth their Declaration of Independence. There it stands in the very front of our Great Charter, embodied in two simple self-evident truths, first, that all men are equal in rights, and secondly, that all just government is founded only on the consent of the governed—the two together making an axiomatic definition which proves itself. Its truth is like the sun; blind is he who cannot see it. And this is the definition bequeathed as a freehold by our fathers. Though often assailed, even by Senators, it is none the less true. So have I read of savages, who shot their arrows at the sun. Clearly, then, that is a republican government where all have equal rights and participate in the government. I know not if anything need be added; I am sure that nothing can be subtracted.

The Constitution itself sets the example of

imposing conditions upon the States. Positively it says, no State shall enter into any treaty, alliance or confederation; no State shall grant letters of marque or reprisal; no State shall coin money; no State shall emit bills of credit. Again, it says, no State shall, without the consent of Congress, lay any duty of tonnage, or keep troops or ships of war in time of peace. All these are conditions in the text of the Constitution, so plain and intelligible as to require no further elucidation. To repeat them on the admission of a State would be superfluous. It is different, however, with that highest condition of all, that the State shall be republican. This requires repetition and elucidation, so as to remove all doubt of its application, and to vitalize it by declaring what is meant by a republican government.

Here I might close this argument; but there are two hostile pretensions which must be exposed; the *first*, founded on a false interpretation of "qualifications," being nothing less than the impossible assumption that because the States may determine the "qualifications" of electors, therefore they can make color a criterion of the electoral franchise; and the *second*, founded on a false interpretation of the asserted power of the States "to regulate suffrage," being nothing less than the impossible assumption that, under the power to regulate suffrage, the rights of a whole race may be annihilated. These two pretensions are, of course, derived from slavery. They are hatched from the eggs that the cuckoo bird has left behind. Strange that Senators will hatch them.

(1.) By the Constitution it is provided that "the electors in each State shall have the *qualifications* requisite for electors of the most numerous branch of the State Legislatures." On this clause Senators build the impossible pretension that a State cannot be interrupted in its disfranchisement of a race. Here is the argument. Because a State may determine the *qualifications* of electors, *therefore* it may deprive a whole race of equal rights and of participation in the Government. Logically speaking, here are most narrow premises for the widest possible conclusion. On the mere statement, the absurdity is so unspeakable as to recall the kindred pretension of slavery, that, because commerce is lawful, therefore commerce in human flesh is lawful also. If the consequences were not so offensive, this "argal" might be handed over to consort with that of the Shakspearean grave-digger. But the argument is not merely preposterous, it is insulting to the human understanding, and a blow at human nature itself. If I use strong language it is because such a proclamation of tyranny requires it. Admitting that the States may determine the "qualifications" of electors; what then? Obviously it must be according to the legitimate meaning of this word. And here, besides reason and humanity, two inexhaustible fountains, we have two other sources of authority; first, the Constitution in which the word appears, and secondly, the dictionaries of the English language, out of both of which we must condemn the intolerable pretension.

The Constitution, where we find this word, follows the Declaration of Independence and refuses to recognize any distinction of color. Search and you will confess, that there is no word of "color" in its text; nor is there anything there on which to found any disfranchisement of a race. The "qualifications" of different officers, as President, Vice President, Senators and Representatives are named; but "color" is not among these. The Constitution, like the Ten Commandments and the Beatitudes, embraces all alike within its mandates and all alike within its promises. There are none who must not obey it; there can be none who may not claim its advantages. By what title do you exclude a race? The Constitution gives no such title; you can only find it in yourselves. The fountain is pure; it is only out of yourselves that the waters of bitterness proceed.

The dictionaries of our language are in harmony with the Constitution. Look at "qualifications" in Webster or Worcester, the two best authorities of our time, and you will find that the word means "fitness"—"ability"—"accomplishment"—"the state of being qualified;" but it does not mean "color!" It embraces age, residence, character, education and the payment of taxes—in short, all those conditions which when honestly administered are in the nature of *regulation*, not of *disfranchisement*. The English dictionaries, most used by the framers of the Constitution, were Bailey and Johnson. According to Bailey, who was the earliest, this important word is thus defined:

(1.) "*That which fits any person or thing for any particular purpose.*

(2.) "*A particular faculty, or endowment, or accomplishment.*"

According to Johnson, who is the highest authority, it is thus defined:

(1.) "*That which makes any person or thing fit.*"

Example.—"It is in the power of the prince to make piety and virtue become the fashion, if he would make them necessary *qualifications* for preferment."—*Swift.*

(2.) "*Accomplishment.*"

Example.—"Good *qualifications* of mind enable a magistrate to perform his duty, and tend to create public esteem of him."—*Atterbury.*

By these definitions this word means "fitness," or "accomplishment," and, according to the well-chosen examples from Swift and Atterbury, it means *qualities* like "piety" and "virtue," or like "faculties of mind," all of which are more or less within the reach of every human being, but it is impossible to ex-

tend this list so as to make "color" a quality. Absolutely impossible. Color is a physical condition, affixed by the God of nature to a large portion of the human race, and insurmountable in its character. Age, education, residence, property, all these are subject to change; but the Ethiopian cannot change his skin. On this last distinctive circumstance I take my stand. *An insurmountable condition is not a qualification but a disfranchisement.* Admit that a State may determine the "qualifications" of electors, it cannot, under this authority, arbitrarily exclude a whole race.

Try this question by examples. Suppose South Carolina, where the blacks are numerous, should undertake to exclude the whites from the polls, on account of "color;" would you hesitate to arrest this injustice? You would insist that such a government sanctioning such a denial of rights, under whatever pretension, could not be republican. Suppose another State should gravely declare, that *all with black eyes* should be excluded from the polls; and still another should gravely declare that *all with black hair* should be excluded from the polls, I am sure that you would find it difficult to restrain the mingled derision and indignation which such a pretension must excite. But this fable pictures your conduct. All this is now gravely done by States; and Senators gravely insist that such exclusion is proper, in determining the "qualifications" of electors.

(2) Like unto the pretension founded on a misinterpretation of "qualifications" is that other founded on a misinterpretation of the asserted power of a State to make "regulations." Listen to this pretension. Assuming that a State may *regulate* the elections, without the intervention of Congress, it is insisted that it may disfranchise a race. Because a State may regulate the elective franchise, *therefore* it may destroy this franchise. Surely it is one thing to regulate and quite another thing to destroy. The power to regulate cannot involve any such conclusion of tyranny. To every such wretched result, howsoever urged, there is one sufficient reply, *non sequitur*.

According to the Constitution, "the *times, places and manner* of holding elections for Senators and Representatives shall be prescribed—each State by the Legislature thereof; but the Congress may, at any time, by law make or alter such *regulations*, except as to the places of choosing Senators." Here is the text of this portentous power to blast a race. In these simple words no such power can be found, unless the seeker makes the Constitution a reflection of himself. The times, places and manner of holding elections are referred to the States; nothing more; and even these may be altered by Congress. Being matters of form and convenience only, in the nature of "police," they are justly included under the head of "regulations," like the sword and uniform of the Army. Do we not familiarly speak of a *regulation* sword and a *regulation* sash? Who will dare to say, that under this formal power of *regulation* a whole race may be despoiled of equal rights and of all participation in the Government? This very pretension was anticipated by Mr. Madison, and condemned in advance. Here are his decisive words in the Virginia Convention:

"Some States might regulate the elections on the principle of equality, and others might regulate them otherwise." * * * * "Should the people of any State, by any means, be deprived of the right of suffrage, *it was judged proper that it should be remedied by the General Government.—Eliot's Debate*, vol. 3, p. 347.

Thus was it expressly understood, at the adoption of the Constitution, that Congress should have the power to prevent any State, under the pretense of regulating the suffrage, from depriving the people of this right or from interfering with the principle of *Equality*.

Kindred to this statement of Mr. Madison is that other contemporary testimony, which will be found in the Federalist, where the irrepealable rights of citizens are recognized without distinction of color. This explicit language cannot be too often quoted. Here it is:

"It is only under the pretext that the laws have transferred the negroes into subjects of property that a place is disputed them in the computation of numbers; and it is admitted that if the laws were to restore the rights which have been taken away *the negroes could no longer be refused an equal share of representation with the other inhabitants.—The Federalist*, No. 54.

This testimony is as decisive as it is authentic. Consider that it was given in explanation and vindication of the Constitution. Consider that the Constitution was commended for adoption by the assertion, that on the termination of slavery "the negro could no longer be refused an *equal share* of representation with the other inhabitants." In the face of this assurance, how can it be now insisted, that, under the simple power to regulate the suffrage, a State may deny to a whole race that "equal share of representation" which was promised? Thus from every quarter we are brought to the same inevitable conclusion.

Therefore, I dismiss the pretension founded on the power to make *regulations*, as I dismiss that other founded on the power to determine *qualifications*. Each proceeds on a radical misconception. Admit that a State may determine *qualifications;* admit that a State may make *regulations*, it cannot follow, by any rule of logic, or law, that, under these powers, either or both, it may disfranchise a race. The pretension is too lofty. No such enormous prerogative can be wrung out of any such moderate power. As well say, that, because a constable or policeman may keep order in a city, therefore he may inflict the penalty of death; or, because a father may impose proper

restraint upon a child, therefore he may sell him into slavery. We have read of an effort to extract sunbeams out of cucumbers; but the present effort to extract a cruel prerogative out of the simple words of the Constitution is scarcely less absurd.

I conclude as I began, in favor of requiring conditions from States on their admission into the Nation, and I insist that it is our especial duty, in every possible way, by compact and by enactment, to assure among these conditions the equal rights of all and the participation of every citizen in the government over him, without which the State cannot be republican. For the present I confine myself to the question of conditions on the admission of States, without considering the broader obligation of Congress to make Equal Rights coextensive with the Nation, and thus to harmonize our institutions with the principles of the Declaration of Independence. That other question I leave to another occasion.

Meanwhile I protest against the false glosses originally fastened upon the Constitution by slavery, and, now continued, often in unconsciousness of their origin, perverting it to the vilest uses of tyranny. I protest against that exaggeration of pretension, which, out of a power to make "regulations" and to determine "qualifications," can derive an unrepublican prerogative. I protest against that pretension, which would make the asserted Equality of States the cover for a denial of the Equality of Man. The one is an artificial rule, relating to artificial bodies; the other is a natural rule, relating to natural bodies. The one is little more than a legal fiction; the other is a truth of nature. Here is a distinction, which Alexander Hamilton recognized when, in the debates of the Convention, he nobly said:

"As States are a collection of individual men, which ought we to respect most, the rights of the people composing them or of the artificial beings resulting from the composition? Nothing could be more preposterous or absurd than to sacrifice the former to the latter."—*Elliot's Debates*, vol. 5, p. 258.

High above States, as high above men, are those commanding principles, which cannot be denied with impunity. They will be found in the Declaration of Independence expressed so clearly that all can read them. Though few, they are mighty. There is no humility in bending to their behests. As man rises in the scale of being while walking in obedience to the divine will, so is a State elevated by obedience to these everlasting truths. Nor can we look for harmony in our country until these principles bear unquestioned sway, without any interdict from the States. That unity for which the Nation longs, with peace and reconciliation in its train, can be assured only through the Equal Rights of All, proclaimed by the Nation everywhere within its limits, and maintained by the National arm. Then will the Constitution be filled and inspired by the Declaration of Independence, so that the two shall be one, with a common life, a common authority, and a common glory.